

### **Remarks / Arguments**

Claims 1 and 3-13 are pending in this application. Claims 1 and 3-8 have been amended. Claim 2 has been canceled. Claim 13 has been added. No new matter has been added.

### **Claim Rejections - 35 USC § 112**

Claims 1-12 have been rejected under 35 USC §112, second paragraph, as being indefinite.

In particular, claim 1 has been rejected on grounds that the expression "R<sup>1</sup> and R<sup>2</sup>, including the double bond connecting them..." would represent open-ended claim language and as such render the claim indefinite as to what moieties or substituents are encompassed by the claims.

Applicants respectfully disagree with the examiner's holding that such use of the term "including" represents an open-ended claim language. However, in order to expedite prosecution, applicants amended claim 1 not to recite "including", but instead to recite "taken together with".

Accordingly, this rejection is moot and its withdrawal is requested.

Claim 1 has also been rejected on grounds that the expression "its part" in claim 1, page 2 of the amendments filed December 21, 2001 would render the claim indefinite as to which part is referred to. Applicants respectfully disagree with the examiner's holding that such use of the term "its part" would render the claim indefinite. However, in order to expedite prosecution, applicants amended claim 1 not to recite "its part", but instead to recite:

"all ring systems mentioned under R<sup>1</sup>/R<sup>2</sup> and R<sup>3</sup>/R<sup>4</sup> optionally being substituted up to 3 times, identically or differently, by halogen, trifluoromethyl, carboxyl, hydroxyl, by straight-chain or branched alkoxy or alkoxycarbonyl each having up

to 6 carbon atoms, or by straight-chain or branched alkyl having up to 6 carbon atoms which may be substituted by hydroxyl or by straight-chain or branched alkoxy having up to 4 carbon atoms".

Applicants believe this amendment overcomes the rejection. Accordingly, withdrawal of this rejection is requested.

Claim 2 has been rejected on grounds that the language "cardiovascular diseases are associated with metabolic diseases or deficits" renders the claim indefinite. As claim 2 has been canceled, the rejection as to it is moot and its withdrawal is requested.

Claim 4 has been rejected on grounds that the expression "optionally associated with" renders the claim indefinite.

Applicant has amended claim 4 to not recite "optionally associated with", but has filed new claim 13 disclosing the disorders formerly disclosed in claim 4. The rejection is therefore moot and its withdrawal is requested.

#### Claim Rejections - 35 USC §103

Claims 1-12 have been rejected under 35 USC § 103 as being unpatentable over Muller et al. (US 5,684,014), and PDR 51<sup>st</sup> ed., 1997, page 770-774. The examiner states that it flows logically to combine the two agents together for the treatment of arteriosclerosis, since both agents are known to treat arteriosclerosis individually, and for this purpose cites *In re Kerkhoven* 205 USPQ 1069.

Applicants point out that *Kerkhoven* does not relate to pharmaceuticals. Contrary to the technology in *Kerkhoven*, pharmaceuticals are interacting within a much more complex system, the human body, where interactions are not readily foreseeable.

Applicants furthermore direct the examiner's attention to table 1 (page 57 of the text as filed), wherein the changes in serum triglycerides of dogs after treatment according to the present invention are described. Here the serum triglyceride of the animal group treated with Cerivastatin 0.03mg/kg + Ex. 48 4mg/kg exhibited a lower serum triglyceride than a control group as well as animal groups treated with either only Cerivastatin 0.03mg/kg or Ex. 48 4mg/kg. As described on page 53, line 6, action on the serum triglyceride can make the combinations of the present inventions suitable for treatment of arteriosclerosis.

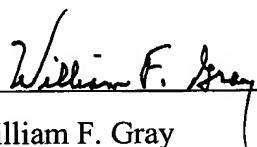
The combinations according to the invention thus have unexpected pharmacological properties. For this reason, they were not obvious at the time the invention was made. Accordingly, withdrawal of this rejection is requested.

Respectfully submitted,

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Date: 14 July 2004

  
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